

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

INITIAL STATEMENT OF REASONS

TITLE 13, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 6.5
AMEND ARTICLE 7.5, SECTION 1239

COMMERCIAL VEHICLE SAFETY ALLIANCE NORTH AMERICAN STANDARD OUT-OF-SERVICE CRITERIA (CHP-R-02-06)

PROBLEM

The current regulations adopt by reference major portions of the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria, April 1, 2001 Edition. This criteria outlines conditions by which a commercial vehicle may be placed out of service as a result of an inspection by an authorized representative of the California Highway Patrol (CHP). CHP personnel utilize this criteria for determining whether or not a vehicle and/or driver is in such an unsafe condition that they are likely to constitute a hazard on a highway and, therefore, should be placed out of service. The Commercial Vehicle Safety Alliance reviews and updates this criteria annually and, to remain consistent, the CHP must update its regulations annually to reflect the most current data available.

PURPOSE OF REGULATIONS

The CHP proposes to update the incorporation by reference of the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria, April 1, 2001 Edition, to the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria, April 1, 2002 Edition, in Title 13, California Code of Regulations (13 CCR). The intent of this criteria is to maintain specific guidelines for determining whether or not a vehicle and/or driver is in such an unsafe condition that they are likely to constitute a hazard on the highway. This criteria provides consistency throughout California with its neighboring states, Canada and Mexico, and maintains a regulatory basis for enforcement efforts as they relate to commercial vehicle out-of-service criteria. Most criteria listed for out-of-service are also violations of current California Vehicle Code (VC) or 13 CCR regulations already in effect and updating regulations to reflect the most current edition will continue to provide the regulatory authority to place the driver and/or vehicle out of service in addition to issuing a citation.

Section 34501(a)(1) VC authorizes the CHP to adopt reasonable rules and regulations which, in the judgment of the Department, are designed to promote the safe operation of vehicles described in Section 34500 VC. In addition, Section 2402 VC provides the Commissioner with the authority to “make and enforce such rules and regulations as may be necessary to carry out the duties of the Department” and Section 2410 VC provides the authority for the CHP to place vehicles out of service (Attorney General’s Opinion NS 2520) in order to “ensure safety.”

SECTION BY SECTION OVERVIEW

§1239(b). Incorporation by Reference.

The CHP proposes that the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria, April 1, 2002 Edition, be incorporated by reference into 13 CCR. The Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria is a document that is annually reviewed and updated by the Commercial Vehicle Safety Alliance, representing a vast cross section of industry and public safety concerns.

Changes to the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria (April 1, 2002 Edition):

Vehicle Condition Out-of-Service Criteria Changes

8. *Steering Mechanism:*

Subpart 8.b(2).: Deletes “Worn, faulty, or” from the Out-of-Service Criteria as it pertains to steering-column universal joints. This amendment to the criteria requires a vehicle to be placed out of service only when a welded repair has been made to steering-column universal joints.

HISTORY/BACKGROUND

In 1980, the Western States Commercial Vehicle Safety Alliance was established when agencies from seven western states and two Canadian provinces met to discuss common needs and ways to create uniformity of inspection standards, procedures and practices. With the intent of improving commercial vehicle safety, the Western States Commercial Vehicle Safety Alliance brought together representatives from federal, state and provincial government agencies as well as the private industry to develop common standards and practices. The Western States Commercial Vehicle Safety Alliance goals, established in the early 1980s, were to:

- Avoid duplication of inspection efforts by the various jurisdictions;
- Improve the safety of equipment being operated on all highways;
- Minimize inspection delays for the operating industry;
- Increase the number of on-highway inspections;

- Bring about an overall improvement in commercial vehicle and hazardous materials transportation safety;
- Improve commercial driver safety performance;
- Improve compliance with the hazardous materials transportation regulations; and
- Bring about improvements in the collection, dissemination and use of operational motor carrier safety data and research findings.

In July 1981, the CHP entered into a memorandum of understanding with the Western States Commercial Vehicle Safety Alliance in order to maximize the use of commercial motor vehicle, driver and cargo inspection resources; to avoid duplication of effort in expanding the number of inspections performed in a region; to advance uniformity of inspection; and to minimize delays in schedules incurred by industry inherent to this type of enforcement activity. As a Western States Commercial Vehicle Safety Alliance member, California agreed to implement procedures pursuant to minimum inspection criteria and out-of-service criteria. Shortly thereafter in 1982, the Western States Commercial Vehicle Safety Alliance became the Commercial Vehicle Safety Alliance. In an effort to keep consistency and uniformity among the member states, the Commercial Vehicle Safety Alliance established the following:

- The Uniform North American Commercial Vehicle Standard Inspection Procedures;
- The adoption of the uniform out-of-service criteria;
- The adoption of the uniform severity rating of out-of-service violations and maximum fine schedules;
- The development of uniform training curriculum for certified Commercial Vehicle Safety Alliance inspectors;
- The development of uniform inspection procedures for vehicles transporting spent fuel, high-level radioactive waste and Transuranics (commonly known as the "Enhanced Inspection Procedure");
- The adoption of uniform bus inspection procedures; and
- The development of uniform cargo tank inspection procedures.

The out-of-service criteria is developed through the Commercial Vehicle Safety Alliance with participation from federal, state and provincial officials and industry representatives, including appropriate manufacturers and other interested parties. Before revisions to the out-of-service criteria are presented for adoption, a need for the change must be established by accompanying documentation, such as:

- Accident experience/statistics;
- Recommendations, including technical analysis;
- A description showing a new technology; or
- A need for redefinition or clarification of existing criteria.

Any modifications to the criteria require ratification by the general membership at the annual Commercial Vehicle Safety Alliance conference held each fall. Approved modifications are published and become effective on April 1st of each year.

The Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria is not contained in federal safety regulations. It is an administrative procedure which has been developed to aid the law enforcement officer in determining when a defect or violation has deteriorated to a point where it is likely to result in a breakdown or accident and must be repaired or corrected before the vehicle and driver are allowed to operate on the highways of North America.

STUDIES/RELATED FACTS

The following documents lend support or are otherwise related to this proposed rulemaking. Copies of these documents, or relevant portions thereof, can be obtained from the CHP by telephoning the Commercial Vehicle Section at (916) 445-1865, 1-800-735-2929 (TT/TDD), 1-800-735-2922 (Voice), or via Facsimile at (916) 446-4579. Please note: All requested materials will be sent via United States Mail.

- Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria; April 1, 2002 Edition.
- Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria; April 1, 2001 Edition.
- Attorney General Opinion NS 2520, Authority to place vehicles out-of-service.

ALTERNATIVES

The CHP has determined that no reasonable alternative identified by the CHP, or that has otherwise been brought to the attention of the CHP, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Alternatives Identified and Rejected:

***Alternative 1:** Do nothing and allow outdated reference to remain in 13 CCR:* This alternative was not selected because the continued use of outdated criteria would defeat the purpose of promoting uniformity and consistency with neighboring states.

***Alternative 2:** Discontinue use of Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria:* Discontinuing the use of the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria as an enforcement tool by CHP Officers may result in:

- Increased numbers of unsafe commercial vehicles being operated on California highways;
- Lack of inspection uniformity with neighboring states; and
- Increased equipment-related traffic collisions involving commercial vehicles.

The estimated cost of this alternative could exceed \$1,000,000. This estimated figure was derived based on additional time accident investigators may spend investigating collisions resulting from increased numbers of unsafe vehicles on California roadways. Additional costs may be incurred because commercial officers may re-inspect vehicles that have already been inspected outside of California because the CHP would not recognize vehicle inspections performed elsewhere.

***Alternative 3:** Update 13 CCR to current revision of the Commercial Vehicle Safety Alliance Out-of-Service Criteria:* This is the Alternative selected as it best meets the safety needs of the public and the Department.

Performance vs. Prescriptive Standards

Due to the nature of the equipment (brakes, frames, fuel systems, etc.) and the standards (driver's licenses, hours of service, etc.) to which this criteria will be applied, it is necessary to apply prescriptive standards. Equipment service limits are critical in commercial vehicles and must be closely adhered to in order to ensure the proper functioning of the equipment. Small deviations in critical component dimensions could mean the difference between an item of equipment that is working properly and an item that fails completely. A critical item of equipment that fails on any vehicle could lead to a collision and possible injury or death. Non-equipment related standards are also prescriptive and critical. In order to properly and safely operate a vehicle, a

driver must pass a written knowledge test as well as demonstrate an ability to operate the vehicle.

LOCAL MANDATE

These regulations do not impose any new mandate on local agencies or school districts.

ECONOMIC IMPACT ON BUSINESS

The CHP has not identified any significant adverse impact on businesses. Businesses involved in the transportation of interstate and intrastate commerce via commercial trucking may choose to purchase the current Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria at a cost of approximately \$27 annually at www.cvsa.org. These businesses will not otherwise experience any greater effect due to the implementation of the Commercial Vehicle Safety Alliance North American Standard Out-of-Service Criteria, April 1, 2002 Edition, than is already commonly known and accepted.

FISCAL IMPACT TO THE STATE

The Department has determined these regulation amendments will result in:

- No significant increased costs for owners or operators of commercial vehicles. This rulemaking action will simply provide a regulatory basis to enforce out-of-service criteria that is already being used by the CHP and throughout North America;
- No significant compliance cost for persons or businesses directly affected;
- No discernible adverse impact on the quantity and distribution of goods and services to large and small businesses or the public;
- No impact on the level of employment in the state; and
- No impact on the competitiveness of this state to retain businesses, as state, provincial and national governments throughout North America have already adopted these requirements.